CODE REVISION COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

MEETING MINUTES[1]

Meeting Date:	**October 28, 2009**
Meeting Time:	**1:30 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: Sen. Travis Holdman; Sen. Michael Delph; Sen. James Arnold; Sen. Greg Taylor; Rep. John Bartlett; Rep. John Barnes; Rep. Ralph Foley; Gretchen Gutman; Gary Miller; Hon. Nancy H. Vaidik, representing Hon. John G. Baker; Michael McMahon; Jerry Bonnet; Richard Bramer; Anita Samuel.

Members Absent: Rep. Robert Behning.

Staff Present: Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Ms. Becky Mortell, Deputy Director, Office of Code Revision; Mr. Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. John Kline, Attorney, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

---

[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.in.gov/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. CALL TO ORDER

The meeting was called to order at 1:30 p.m. by Representative John Bartlett.

II. ELECTION OF CHAIR

A motion was made and seconded to nominate Representative John Bartlett to be the new Chairman of the Code Revision Commission. Representative Bartlett was elected Chairman by consent.

III. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on December 9, 2008, and there were no questions. The Commission approved the minutes by consent.

IV. INTRODUCTORY REMARKS

Mr. John Stieff, Director of the Office of Code Revision, Legislative Services Agency, noted that he anticipated this to be the first of two meetings of the Commission for the interim. Mr. Stieff requested that the Commission meet in December to discuss a continuing project dealing with noncode issues. He stated that he sent a letter to the interested parties soliciting comments on the noncode project and that he expected comments back by November 25. Mr. Stieff explained that he would analyze the comments and present a report to the Commission regarding the noncode comments received.

Mr. Stieff noted that after the regular legislative session ended, the Legislative Services Agency (LSA) published the Indiana Code and placed the Code on the internet on July 1. In addition, LSA prepared and published the Code after the special session and placed the Code online August 5. Finally, LSA prepared and published the DVD of the Code on August 31.

Mr. Stieff requested that the Commission consider two ongoing projects, including the annual technical corrections bill and the noncode project.

V. DISCUSSION OF TECHNICAL CORRECTIONS BILL

Representative Bartlett recognized Craig Mortell, Deputy Director of the Office of Code Revision (OCR), to discuss PD 3103, a draft of the 2010 technical corrections (TC) bill. Mr. Mortell stated that PD 3103, like TC bill drafts of previous years, is made up of SECTIONS falling into two broad categories:

(1) SECTIONS resolving "conflicts" in the Indiana Code; and
(2) SECTIONS resolving various other types of technical problems that have found their way into the Indiana Code.

Mr. Mortell made the following points concerning the first category of SECTIONS.

As used by OCR, the term "conflict" refers to a situation in which an existing section of the Indiana Code was amended differently by two or more acts; neither act recognized and incorporated the changes being made in the Code section by the other act; and both acts became law. When a conflict arises, the Indiana Code ends up containing not one of the Code section affected by the conflict but two versions (or more, if there were more than two conflicting acts). It is undesirable for the Code to contain multiple versions of any Code section; therefore, if possible, conflicts are resolved through the TC bill.

To resolve a conflict, OCR must first determine whether there is any *substantive* conflict -- that is, any conflict directly involving the meaning or effect of the law -- between the versions of the Code section. For example, if one act amended a Code section to increase a particular fee and the other act amended the Code section to eliminate the fee, the conflict between the two acts would be a substantive conflict. A substantive conflict cannot be resolved in the TC bill.

If a particular conflict is not substantive, it is resolved in the TC bill through a "conflict

resolving SECTION." A conflict resolving SECTION differs from other SECTIONS in the following ways:

- The lead-in line of the conflict resolving SECTION must refer to both (or all) of the acts that amended the Code section in the previous session, and it must contain the words "IS CORRECTED AND AMENDED TO READ ...".
- The conflict resolving SECTION must include every word that appears in either act's version of the Code section. The type style in which each word is presented in the conflict resolving SECTION follows this scheme:

If a word was:	the word is presented:
already in the Code section and was not affected by either act	in roman
added to the Code section by <u>both</u> acts	in roman
added to the Code section by <u>one</u> act but not by both acts	in *italics*
stricken by <u>one</u> act but not by both acts	in ~~*italics and stricken*~~
stricken by <u>both</u> acts	not at all -- the word is deleted

Mr. Mortell drew the Commission's attention to SECTION 5 of PD 3103, the SECTION resolving the conflict affecting IC 4-12-1-14.2. He explained that this conflict arose in 2006 and that OCR originally viewed it as a substantive conflict, but that OCR had recently changed its opinion, no longer viewed the conflict as a substantive conflict, and wanted to be sure that the Commission was comfortable with resolving the conflict in the 2010 TC bill.

Mr. Mortell then made the following points concerning the second category of SECTIONS in PD 3103 -- those resolving various types of technical problems other than conflicts.

SECTIONS within this second category address many different types of problems, including incorrect internal references; provisions that have expired by their own terms; incorrect tabulation; duplicate section numbers; grammatical problems; missing prepositions or conjunctions; and misspellings.

OCR receives a lot of assistance in finding Code SECTIONS that need some sort of technical correction in the TC Bill. After each session, the attorneys of LSA's Office of Bill Drafting and Research (OBDAR) review every act that passed, looking for technical or legal problems that may exist, and they inform OCR about every problem they find. OBDAR attorneys also inform OCR about technical problems in the Indiana Code whenever they happen to notice them. Practicing attorneys and members of the public also contact OCR from time to time with tips on Code sections in need of technical correction. SECTION 85 of PD 3103, which amends IC 32-28-3-9, resolves a technical problem that was brought to OCR's attention by attorney J. Earl Tison of Columbia City, Indiana.

In deciding whether an apparent problem is suitable for resolution in the TC bill draft, OCR follows certain guidelines that are based on guidance OCR has received from the Commission over the years. Under these guidelines, a matter is not considered suitable for resolution in the TC bill draft unless:

(1) it is clear that there is a mistake or problem of some sort;
(2) there is only one way in which the mistake or problem can be corrected;
(3) the one way of correcting the mistake or problem is apparent on the face of the Code section itself (i.e., the Code Revision Commission should not be asked to rely on a drafter's or legislator's word as to what was intended); and
(4) the proposed correction will not make a substantive change in the law.

Mr. Mortell drew the Commission's attention to SECTION 40 of PD 3103, which he referred to as a type of proposed technical correction that is new to the TC bill. As noted in the

SECTION-by-SECTION outline of PD 3103, one noncode SECTION enacted in 2009 (SECTION 14 of Senate Enrolled Act 221) can be expected to have substantive legal effect for a considerable time into the future and does not expire by its own terms as of any date certain. SECTION 40 of PD 3103 would convert the language of that noncode SECTION into a new section of the Indiana Code. This, Mr. Mortell said, would be consistent with the current trend toward putting fewer provisions into noncode SECTIONS and more provisions into the Code.

Senator Greg Taylor asked Mr. Mortell about the conflict resolution process and about whether the intent of the authors of conflicting acts might ever be considered in resolving the conflict between the acts. Mr. Mortell replied that, under the third guideline distilled from guidance OCR has received over the years from the Commission, OCR does not consider a mistake or problem perceived in a Code section to be appropriate for resolution in the TC bill draft unless the one way of correcting the mistake or problem is apparent on the face of the Code section itself. Under this guideline, he said, OCR operates on the principle that the Commission shouldn't be asked to include a provision in the TC bill solely on the basis of what someone said about the intent behind the Code section. Representative Ralph Foley asked that OCR provide the authors and sponsors of the TC bill with a written description of the type styles used in conflict resolution SECTIONS so that the authors and sponsors could refer to the written description when the TC bill is being heard in committee and discussed on the floor. Senator Mike Delph concurred in Rep. Foley's request. Senator Delph also expressed concern about the possibility that, because the TC bill contains such a large number of SECTIONS and tends to receive less scrutiny during the session than ordinary bills, a substantive change might be unintentionally included in the TC bill and might go undetected until it had altered the law and affected citizens' rights and privileges. Mr. Mortell replied that OCR appreciates the gravity of this possibility, and he assured Senator Delph that OCR makes a strenuous effort to ensure that the TC bill contains no substantive change in the law.

Mr. Mortell stated that PD 3103 comprises "Part A" of the proposed 2010 TC bill and contains the majority of the material OCR will propose for inclusion in the 2010 TC bill; that a "Part B" draft is being prepared for consideration by the Commission at the December meeting; and that the "Part B" draft will consist mainly of SECTIONS addressing references that remain in the Indiana Code to sections, chapters, and articles that have been repealed.

Two members of the Indiana Business Law Survey Commission, Marci Reddick of Taft Stettinius & Hollister LLP and Steve Thornton of Barnes & Thornburg LLP, asked the Commission to consider endorsing legislation to resolve an error in IC 23-1-39-4(a). According to Ms. Reddick and Mr. Thornton, the Indiana Business Law Survey Commission prepared the outside draft on which Senate Enrolled Act 450 (P.L.133-2009), the act that added IC 23-1-39 to the Code, was based. Due to an error in the outside draft, they said, IC 23-1-39-4(a) currently reads as follows (emphasis added):

> Sec. 4. (a) This section <u>does not apply to any</u> corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.

But, they said, IC 23-1-39-4(a) was intended to read like this:

> Sec. 4. (a) This section <u>applies only to a</u> corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.

John Stieff said that the IC 23-1-39-4(a) problem was of a type that has traditionally not been included in the TC bill. Specifically, he said, the IC 23-1-39-4(a) problem fails under the

four-part guidelines on suitability for inclusion in the TC bill because, considering only what is apparent on the face of the Code section itself, one cannot detect that there is any sort of mistake or problem in IC 23-1-39-4(a). Senator Delph inquired whether Mr. Stieff believed the problem to be a substantive issue. Mr. Stieff stated that he believes the problem is substantive because it concerns the applicability of the provision. Senator Delph stated that if the problem is substantive it should go through the legislative process to be fixed and not be placed in the TC bill. Senator Holdman agreed that the problem appeared to be substantive and stated that placing the provision in the TC bill would stray from the standards and mission of the Commission in presenting a TC bill that has no substantive matters included. A discussion ensued during which Senator Taylor and Representative Bartlett expressed opinions on whether the IC 23-1-39-4(a) problem was appropriate for resolution in the TC bill. Representative Foley mentioned that the problem could be resolved in a separate trailer bill, so that the TC bill would be able to stand up to the scrutiny of the legislature as a purely technical bill.

The Commission decided, by consent, to adopt as an official product of the Commission a separate 2010 "trailer bill" that would amend IC 23-1-39-4(a) so as to make it read as the Indiana Business Law Survey Commission originally intended. In response to Mr. Stieff's question, the Commission decided that the trailer bill should include this line in its digest: "The introduced version of this bill was prepared by the Code Revision Commission.". The Commission agreed to have Senator Greg Taylor as author of the trailer bill.

VI. DISCUSSION OF THE NONCODE PROJECT

The Commission introduced the members present, and then Mr. Stieff provided some background information regarding the history of the Indiana Code and noncode provisions.

Mr. Stieff commented that the Indiana Code is the official compilation of enactments of the Indiana General Assembly that is topically organized and subdivided into titles, articles, chapters, and sections with this organizational structure first enacted in 1971. He stated that the last official revision of session laws approved by the General Assembly before that date was the Revised Statutes of 1852, and that enrolled acts adopted during the legislative sessions between 1852 and 1971 were published in separate volumes for each of those legislative sessions. Mr. Stieff noted that there was no official cumulative version of those session laws, so it was increasingly difficult to determine which laws were actually in effect without reliance on unofficial sources produced by private publishers.

Mr. Stieff stated that the 1971 version of the Indiana Code was a reenactment and rearrangement of most, but not all, of Indiana's pre-1971 session laws. He identified certain provisions that were not made part of the Code because the legislature determined them to be temporary, transitional, or self-terminating as what is now often referred to as "noncode" law - statutes that were not repealed and remained in effect, but were not printed in the Indiana Code and instead maintained in the noncode law.

Mr. Stieff noted that every year since 1971, the legislature has enacted legislation that has added to, amended, or repealed the existing provisions of the Indiana Code and sometimes included temporary or transitional noncode provisions. He stated that in 1976, the legislature recodifed the entire Indiana Code and repealed the code in existence before 1976 including much of the noncode law enacted between 1971 and 1976, but certain noncode provisions were preserved.

Mr. Stieff said that legislation was approved by the Code Revision Commission in 1989 that repealed most of the noncode statutes that were enacted after the 1975 Regular Session and before the 1985 Regular Session and preserved several noncode statutes. He stated that after 1989 the noncode law had not been reviewed until the current noncode project began last year.

Mr. Stieff noted that starting in 2008, LSA has conducted a comprehensive review of the noncode statutes enacted from the 1985 Regular Session through the 2009 Regular and Special Sessions, and that LSA is in the process of analyzing each of these noncode statutes to determine whether the statutes can be repealed. He stated that if LSA recommends that some statutes should not be repealed, the Commission would determine whether the statutes should be codified in the Indiana Code or whether the statute should be preserved as a noncode statute.

Mr. Stieff described a bill prepared last year, Senate Enrolled Act 346 - Regular Session (SEA 346), that was approved by the Commission to deal with many of the noncode statutes enacted since 1985. He stated that SEA 346 contained provisions that specify that the expiration of a statute has the same effect as the repeal of a statute, and consequently many noncode acts enacted since 1985 that contain an expiration provision have been disposed of. He stated that SEA 346 also took several noncode statutes and codified them in the Indiana Code.

Mr. Stieff explained that the noncode statutes that remain to be dealt with following the passage of SEA 346 were in a packet compiled for this meeting of the Commission and included a table that describes each category of noncode acts, gives an example of an act in each category, and describes LSA's suggested disposition of the act. He stated that LSA is seeking comments from the 136 individuals on the Commission's Interested Party List and the Commission to determine if there is agreement as to the way LSA proposes to dispose of the remaining noncode statutes and to draft Indiana Code and noncode statutes in the future. Mr. Stieff noted that LSA requested to have comments from the interested parties by November 25. At that time, LSA will consider all the comments received and report back to the Commission at the next meeting in early December.

Mr. Stieff noted that the noncode project is good government, and that once completed, most of the noncode acts enacted since 1985 will be repealed, and many noncode acts will be codified in the Indiana Code. As a result, Indiana's statutory law will be easier to research and access.

Senator Delph asked how long a statute could be in existence and not be added to the Indiana Code and whether placing provisions in the Code was a cost issue. Mr. Stieff stated that provisions could exist in the noncode indefinitely. Mr. Stieff gave an example and explained that some provisions are impractical to insert into the Code. Judge Nancy H. Vaidik asked Mr. Stieff why a noncode with no expiration date would not be placed in the Code. Mr. Stieff stated that LSA used to have a policy that if the provision was in effect for less than five years it was okay to place it in the noncode, but LSA now places the provision in the Code if it is practicable and the provision is not temporary or transitional. Mr. Jerry Bonnet, Secretary of State's Office, asked if the noncode is published, and Mr. Stieff explained that the noncode is found in the enrolled acts and the Acts of Indiana, which are online back to the year 2000. Mr. Stieff discussed how the links to the noncode can be accessed online.

Ms. Gretchen Gutman, Attorney - Taft Stettinius & Hollister LLP, inquired about LSA's progress on the five tasks for phase II of the noncode project, the proposals for future noncode determinations, the size of the noncode bill, and how other states deal with noncode. Ms. Gutman also expressed concern about moving forward this session with a bill for such a large project in the time frame remaining. Mr. Stieff explained the remaining task for phase II involves review of the tax, finance, and budget provisions of the noncode and that LSA is seeking guidance in these areas. He stated that most other states with the exception of Alabama have noncode provisions and deal with noncode similarly to Indiana. Mr. Stieff stated that he was unsure how large the phase II noncode bill would be, but that it is unlikely that LSA would present a draft to the Commission this session that would complete the project. Some discussion ensued regarding how the Commission would deal with the comments and suggested dispositions received from the interested parties and

how the Commission would analyze the dispositions. The Commission agreed that Mr. Stieff would receive and compile the comments in a summary for presentation to the Commission at the next meeting. Senator Delph inquired about the interested parties list and asked to receive a copy of the list. Mr. Stieff noted that the list contains individuals interested in the work of the Commission and includes attorneys, members of the executive branch agencies, and judges.

Ms. Paje Felts, Legislative Counsel of the Indiana State Bar Association, commented that the noncode project is tedious work and thanked LSA for their hard work.

Mr. Bob Rudolph, Senior Attorney, Office of Bill Drafting and Research, Legislative Services Agency, provided further information regarding the noncode project. Mr. Rudolph explained that LSA began by analyzing 9,200 sections of noncode and that roughly 2,000 remain to be considered. Mr. Rudolph noted that he arranged the remaining noncode provisions into subject matter groups in a printed table so that the interested parties and members would be able to review law within their areas of expertise. He stated that some provisions touched various areas of the law, so some overlap in the subject matter categories was inevitable. Mr. Stieff commented that LSA has made significant progress on the noncode project by reducing the number of noncode sections under consideration from 9,200 to 2,000, and he requested continued guidance from the members for dealing with the remaining provisions.

VII. OTHER BUSINESS
The timing for the next Commission meeting was discussed. The Commission scheduled the next meeting by consent for December 7, 2009, at 1:30 p.m. The Commission agreed to have Senator Greg Taylor as author and the remaining senators on the Commission as coauthors of the technical corrections bill. Additionally, the Commission authorized the inclusion in the digest of the bill the following statement: "The introduced version of this bill was prepared by the Code Revision Commission.".

VIII. ADJOURNMENT
The meeting was adjourned by Representative Bartlett at 3:25 p.m.